Murray-Aynsley C.J. (S.) : — I have had the advantage of reading the judgment of the Chief Justice of the Federation of Malaya. It expresses my views so exactly that it is not necessary to add anything.

I agree with the view of the Judge who heard the matter in the Court below that it is desirable to salvage arbitration proceedings where possible. In the present case it is not possible. The arbitrator has taken a fundamentally wrong view of his function. No supplementary findings can put the matter right.

I concur in the proposed order.

Pretheroe J. : — I have had the advantage of reading the judgment prepared by the learned President and, with respect, I am in agreement with it. As we are differing from the learned Judge in the Court below however I will add a few words of my own.

There were numerous grounds of appeal and, in my opinion, the appellants are entitled to succeed on several of them. For present purposes I propose to consider one ground only viz. that the award is bad for ambiguity. In the award the following appears :—

> "I find that, having due regard to force majeure, the Miners, and therefore the sub-lessee, have complied with their part of the Agreement . . . . ."

What does "force majeure" mean as used in the above excerpt? It seems fairly certain that the phrase is not used in its strict legal sense. Then in what sense is it used? The learned Judge in the lower Court devoted considerable time considering this matter and ultimately (after agreeing that the expression was "unfortunate") was able to arrive at a decision. This was "that the arbitrator in considering the question has taken into account certain statutory restrictions placed on the output of tin and the effect of the late war." This may very well be the correct solution but it is the duty of an arbitrator to prepare an award which the parties to the submission can understand and in this case one of the parties (the appellants) cannot understand it. The fact that the learned Judge in the lower Court had to spend so much time and trouble to ascertain the meaning of the expression shows that, at the best, there is much obscurity in this finding.

Before this Court Sir Roland Braddell, for the appellants, made several submissions on this aspect of the appeal but relied chiefly on that which alleged that there is a patent ambiguity on the face of the award. In his reply Mr. Smith, for the respondents, adopted the reasoning and the decision of the learned Judge in the lower Court and left it at that.

As I am at a loss to understand what the Arbitrator meant it necessarily follows that, as far as I am concerned, Sir Roland Braddell's submission must succeed. With respect to the learned Judge in the lower Court the award is, in my opinion, ambiguous. In several cases, notably *Re Tidswell*[6], it has been held that uncertainty or ambiguity in an award "is a fatal objection" and the award must be set aside. For this additional reason, therefore, I agree that this award must be wholly set aside.

Appeal allowed.

[The appeal came again before the Court on May 28, 1955 when after hearing further arguments the Court unanimously certified for two counsel for the appellants in respect of the costs of the appeal, and allowed the appellants costs of the motion in the Court below. No order was made as to costs of the abortive arbitration proceedings.

The respondents then moved the Court for leave to appeal to the Privy Council and for stay of execution. The value of the subject matter exceeded $4,500. Counsel for the respondents asked for conditional leave to appeal and stay of execution pending appeal.

Counsel for the appellants submitted that the order setting aside the award was interlocutory. *In re Crŏasdell & Cammell Laird & Co. Ltd.*[7]. He further submitted that leave to appeal could only be granted if it was a fit one for appeal which it was not, and cited section 3(1) of the Appeal to His Majesty in Council Ordinance (No. 50 of 1949) which was similar to section 28 of the S.S. Courts Ordinance (*Mallal's* Straits Settlements Practice, pp. 662-4) and also similar to sections 109 and 110 of the Indian Civil Procedure Code. He submitted that the respondents must shew that a point of general or public importance was involved. *Ayyar v. Ayyar*[8], *Radha Kishen Das v. Rai Krishen Chand*[9] and *Govind Das v. Indrawath*[10].

The Court unanimously held that the order was an interlocutory order and that it was not a fit case for appeal to the Privy Council. Leave refused. *Ed: M.L.J.*].

Solicitors : *Das & Co.; Cheang Lee & Ong.*

CHAI WOOI v. PUBLIC PROSECUTOR

[C. A. (Whyatt C.J. (S), Good and Syed Sheh Barakbah JJ.) March 27, 1957]

[Ipoh — F.M. Criminal Appeal No. 50 of 1956]

Criminal Procedure Code (F.M.S. Cap. 6)Ch. XXI — Assessors — Rights and duties — participation in trial.

Interpretation and General Clauses Ordinance, 1948, s. 14 — Interpreting new provision substituted in existing statute.

The provisions of Chapter XXI of the Criminal Procedure Code confer on the assessors a right and a duty, not merely to be present throughout the trial, but to participate in the proceedings, even to the extent of causing execution to be stayed on the judgment if they hold opinions different from the Court which has passed

sentence of death. All these provisions would be rendered nugatory and the statutory right and duty of the assessors to participate in the proceedings stultified, if the Court could, in its discretion, decide a case without specifying any issues of fact at all. The existence of the assessors' statutory rights and duties does not depend upon whether their exercise is a formal matter, any more than the existence of the Court's statutory functions depends upon such considerations. The Legislature intended that the assessors should participate in the trial by expressing opinions to the Court on issues specified by the Court, and any discretion which reduces them to the role of passive spectators is without sanction or authority. If the Court were to proceed to judgment in the absence of both assessors, the proceedings would be a nullity.

The effect of section 14 of the Interpretation and General Clauses Ordinance, 1948 is that in interpreting a new provision which has been substituted in an existing statute for a former provision one is obliged to look at the surviving connected provisions in order to gather the intention of the legislature as a whole. If there is an inconsistency between the new provision and any of the surviving ones the maxim *leges posteriores priores contarias abrogant* applies and the earlier provisions are deemed to be repealed by necessary implication to the extent that they are inconsistent with the later provision.

COURT OF APPEAL.

S. P. Seenivasagam for the appellant.

Che Abdul Kadir (Federal Counsel) for the respondent.

Whyatt C.J. (S.) : — The appellant was convicted under Emergency Regulation 4(1) (b) of carrying a hand-grenade without lawful excuse and sentenced to death. According to the evidence of the prosecution, a platoon of the Kinta Valley Home Guard ambushed the appellant at Batu Karang, Kampar at about 8 p.m. on the 7th February 1956 and severely wounded him in the leg. He managed to crawl into a drain a few yards away where after a search he was discovered and taken prisoner. He was wearing a khaki shirt and black trousers, and a communist one-star cap was lying on the ground underneath him. In a pouch attached to a belt around his waist was a hand-grenade which on later examination by the police armourer of Perak was found to be a No. 36 type of British manufacture, fitted with a locally-made detonator, old but still serviceable.

Under the provisions of Emergency Regulation 4(1) (b), the onus is on the accused to prove lawful excuse for the possession of ammunition and in order to do this, he must show among other things that he acquired possession in a lawful manner and for a lawful purpose. Two days after his capture, the appellant made a statement in hospital to a police inspector in which he said the hand-grenade was given to him when he was in the Malayan Peoples Anti-Japanese Army and he re-affirmed this statement when he gave evidence at the trial but later during the course of his evidence, he stated in answer to the learned trial Judge that "he was issued with the grenade by the jungle people". The defence of the appellant, bearing in mind the onus which rested on him, was, therefore, to say the least, extremely weak. The learned trial Judge went so far as to say to the assessors there was not a scrap of evidence that the appellant had acquired the hand-grenade in a lawful manner and for a lawful purpose and that as the appellant had no defence at all, it was not necessary for them to express their opinions on any of the issues which arose in the trial. The learned trial Judge decide not to put any questions to the assessors except to ask them if they wished to recommend the appellant to mercy. The assessors retired to consider this question and after a short interval returned and informed the Judge that they had no recommendation to make. Thereupon the learned trial Judge proceeded to decide the case himself and found the appellant guilty and sentenced him to death.

The appellant complains that this procedure, admittedly without precedent, was contrary to law and the conviction and sentence should therefore be set aside. Until 1954 the provisions of the Criminal Procedure Code relating to assessors' opinions were contained in section 197 which provided that after the conclusion of the case the defence and the reply of the prosecution the Court should require each of the assessors to state his opinion orally and should record such opinion. This section was amended in 1954 to read as follows :—

"When the case for the defence and the reply (if any) of the officer conducting the prosecution are concluded the Court . . . . . shall ascertain from each of the assessors his opinion, and his reasons therefor, on such particular issues of fact relevant to the charge as the Court may specify. All such opinions and reasons shall be recorded."

The difference between the old law and the law as amended, therefore, is that whereas the former provided that "the Court shall require each of the assessors to state his opinion," the latter provides that "the Court shall ascertain from each of the assessors his opinion and his reasons therefor, on such particular issues of fact relevant to the charge as the Court may specify." The meaning to be placed on the words in the amended section do not, as a matter of construction, give rise to any great difficulty. The Court is given a discretion as to the issues of fact it specifies to the assessors and having specified them, it is then required to ascertain the assessors' opinions upon them and their reasons for their opinions. Up to that point the position is quite clear. The question which arises in this case, however, is whether it is a proper exercise of discretion to specify no issues at all; or, to put the matter another way, whether it is proper for the Court so to exercise its discretion that the trial ceases to be a trial with the aid of assessors and becomes instead a trial by the Judge alone in which the assessors are merely statutory observers of the proceedings.

An examination of the Criminal Procedure Code indicates clearly, in my view, that such a result was never contemplated by the legislature and is contrary to Chapter XXI of the Code. This Chapter is headed "Of trial before the Court of a Judge with the aid of

assessors", and provides in its first section that in all cases where the punishment of death is authorised by law the accused shall be tried with the aid of assessors. The following sections provide that the Court shall choose two assessors from those summoned to act as such and that as far as practicable, one at least shall be of the same race as the accused. Then follows a provision that if in the course of a trial, one of the assessors is prevented from attending or absents himself, the trial shall proceed with the aid of the remaining assessor but if both are prevented from attending or absent themselves, the proceedings shall be stayed and a new trial shall be held with the aid of fresh assessors. A later section provides that if the trial is adjourned, the assessors shall attend at the adjourned sitting and at every subsequent sitting until the conclusion of the trial, and this is followed by section 197 already referred to, which provides that at the conclusion of the case for the defence and the prosecution, the Court shall ascertain the opinion of the assessors on such particular issues of fact as it may specify. The next two sections, namely section 198 and 199, are important since they state what is to happen if the Court and the assessors are in disagreement. The first of these sections provides that the Court shall consider the opinions of the assessors before giving judgment but shall not be bound to conform to them provided it records its reasons for its dissent; the second provides that if the Court dissents, from the opinions of both assessors, it shall forthwith forward the record to the Court of Appeal and the case shall be treated as an appeal lodged by the person convicted, whether or not he has given notice of appeal.

It seems to me plain that these provisions taken as a whole, confer on the assessors a right and a duty, not merely to be present throughout the trial, but to participate in the proceedings, even to the extent of causing execution to be stayed on the judgment if they hold opinions different from the Court which has passed sentence of death. All these provisions would be rendered nugatory and the statutory right and duty of the assessors to participate in the proceedings stultified, if the Court could, in its discretion, decide a case without specifying any issues of fact at all. It is no answer to say that the participation of the assessors in this case would have been purely formal because the judgment of the Court was a foregone conclusion. The existence of the assessors' statutory rights and duties does not depend upon whether their exercise is a formal matter, any more than the existence of the Court's statutory functions depends upon such considerations. It depends upon the interpretation to be placed upon the provisions of Chapter XXI of the Criminal Procedure Code, and for the reasons I have given, I am satisfied the legislature intended that the assessors should participate in the trial by expressing opinions to the Court on issues specified by the Court, and any procedure purporting to be an exercise of the Court's discretion which reduces them to the role of passive spectators is without sanction or authority.

The only remaining question is to decide the effect of this unauthorised procedure in the present case. There can, I think, be no doubt that if a Court were to proceed to judgment in the absence of both assessors, the proceedings would be a nullity. That is the effect of section 188 of the Criminal Code which provides that if both assessors are absent, the proceedings shall be stayed and a new trial held with fresh asssessors. In other words, if there are no assessors, there is no trial. I am unable to see any difference in principle between a trial where the assessors are not present and a trial where they are present merely as observers, and if in the former case, the trial is a nullity, so also must it be in the latter case. Accordingly therefore, I would allow this appeal and order the appellant to be re-tried on this charge.

Good J. : — I have had the advantage of reading the judgment of the learned Chief Justice of Singapore sitting as the President of the Court. I am in complete agreement with it and have only a few words to add.

Section 14 of the Interpretation and General Clauses Ordinance, 1948, provides :—

> "14. Where an Ordinance or Enactment amends or adds to any Ordinance or Enactment, the amending Ordinance or Enactment shall, so far as is consistent with the tenor thereof, and unless the contrary intention appears, be construed as one with the amended Ordinance or Enactment and as part thereof."

The effect of this section is that in interpreting a new provision which has been substituted in an existing statute for a former provision one is obliged to look at the surviving connected provisions in order to gather the intention of the legislature as a whole. If there is an inconsistency between the new provision and any of the surviving ones the maxim *'leges posteriores priores contarias abrogant'* applies and the earlier provisions are deemed to be repealed by necessary implication to the extent that they are inconsistent with the later provision.

I need not dwell upon the manifest intention of the legislature which runs through the whole of Chapter XXI since this has been fully dealt with in the judgment of the learned President. The intention clearly was that the assessors should participate in and not be mere passive spectators at the trial and I can find nothing in section 197 as amended which would alter the original intention by necessary implication. It does not seem to me to strain the wording of the section if one interprets it as requiring the trial Judge to put some

relevant issues of fact to the assessors while leaving him a discretion as to which particular issues of fact he will so put.

Where a power is conferred upon an authority to do something which is designed to give effect to the purpose of a statute then even if the empowering words are drafted in such a way as apparently to confer a discretion they must be construed as imposing a duty if failure to exercise the power would defeat the objects of the legislation. One simple example will serve to illustrate this. Under section 4(2) of the Post Office Ordinance, 1947, the Postmaster-General may establish post offices at such places as he thinks fit. If the Postmaster-General, treating this provision as giving him a discretion, decided to establish no post offices at all one of the principal objects of the Ordinance would be frustrated and therefore the empowering words though apparently conferring a discretion must be understood to impose a duty.

In my opinion, the wording of section 198 puts the matter beyond any doubt. The opening words of the section are :—

"After having recorded and considered the opinions of the assessors, the Court shall give judgment . . . . ."

The plain meaning of these words is that the Court must record and consider the opinions of the assessors before giving judgment. The Court cannot disregard this requirement however uncomplicated the issues in the case may be for it is expressed in terms which make the recording of the assessors' opinions a condition precedent to the delivery of the judgment.

For these reasons I agree that the appeal should be allowed and I would order a re-trial upon the charge.

Syed Sheh Barakbah J. : — I have had the advantage of reading the judgments of the learned President and Good J. in this appeal. I entirely agree with their conclusions and have nothing to add.

Appeal allowed.

Solicitors : *S. Seenivasagam & Sons.*

TAN KAY TECK & ANOR. v. THE ATTORNEY-GENERAL

[O. Cr. J. (Whyatt C.J.) July 10, 1957]

[Singapore — Crown Suit No. 7 of 1957]

False imprisonment — Wrongful arrest — Detention — Damages — Criminal Procedure Code (Cap. 132), s. 31 — "Reasonable complaint" — Arrest without warrant — Extent of police officer's authority — Reason for arresting — Prisoner informed — Onus.

Bail — Persons released — Re-arrest.

The petitioners in this case claimed damages from the Crown for false imprisonment, alleging that they were wrongfully arrested and detained by an Asst. Superintendent of Police on March 22, 1954.

The facts were briefly as follows: On the night of March 22, 1954 the petitioners, husband and wife, retired to bed at about 10.00 p.m. but shortly before midnight they were woken up and arrested. The first petitioner was able to put on a few day clothes, but his wife, who was five months pregnant, was not and she went to the police station wearing her night pyjamas. They were kept at the police station from midnight until 5.00 a.m. before being released on police bail. Later that morning they appeared before the Magistrate and were charged under section 347 of the Penal Code with having wrongfully confined one Ng Yow Jick at their house on March 17 with intent to extort property from him. After that they were once again released on bail but were re-arrested outside the courtroom and taken to the Criminal Investigation Department to be fingerprinted before being allowed to go home. They came before the Magistrate again on March 30 and were remanded on bail until April 13 but when the case came up on that date, the prosecution offered no evidence and they were released.

Held: (1) a police officer is entitled to arrest a person without warrant if he has received a reasonable complaint that such person has been concerned in an offence under section 347 of the Penal Code. In this case no reasonable complaint was made against the petitioners within the meaning of section 31 of the Criminal Procedure Code and therefore their arrest without warrant and their subsequent detention was unlawful;

(2) as the petitioners had been released by the Magistrate on bail, the police had no authority to take them into custody again in order to convey them to the Criminal Investigation Department for finger printing; their action, in effect, amounted to a second false imprisonment;

(3) a false imprisonment does not merely affect a man's liberty, it also affects his reputation. Where a person has been wrongfully arrested and detained, it is in the public interest that sufficient damages should be awarded in order to give reality to the protection afforded by law to personal freedom.

Damages for $1,000.00 to each petitioner allowed with costs.

The word "complaint" in section 31 of the Criminal Procedure Code means a complaint to a police officer.

Cases referred to :—

(1) *Tims v. John Lewis & Co.* (1951) 2 K.B. 459, 472.

(2) *Christie v. Leachinsky* (1947) A.C. 573.

(3 *Dumbell v. Roberts* (1944) 1 All E.R. 329.

(4) *Walter v. Alltools Ltd.* 61 T.L.R. 39.

CLAIM FOR DAMAGES for Wrongful Imprisonment.

K. Seth (*N. A. Christopher* with him) for the petitioners/plaintiffs.

A. V. Winslow (Senior Crown Counsel) for the defendant.

Whyatt C.J. : — In this case the first petitioner, Tan Kay Teck, and his wife, Chia Bee Sim, the second petitioner, claim damages from the Crown for false imprisonment, alleging that they were wrongfully arrested and detained by Assistant Superintendent of Police, Bryan Jones, on the 22nd March 1954.

The petitioner is a building contractor and he resides with his wife at 17 St. Michael's Road, Singapore. On the night of the 22nd March they retired to bed at about 10.00 p.m. but shortly before